

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**ANDREA LaPIETRA, Individually and
as Power of Attorney, and DEASHON TARVER,**

Plaintiffs,

v.

9:19-CV-1527

CITY OF ALBANY POLICE DEPARTMENT, et al.,

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION and ORDER

I. INTRODUCTION

This *pro se* action was referred to the Hon. Thérèse W. Dancks, United States Magistrate Judge, to review Tarver's *in forma pauperis* application¹ and for an initial review of the Complaint pursuant to 28 U.S.C. § 1915(e). Judge Dancks issued a Report-Recommendation and Order on October 5, 2020. Dkt. No. 24. On October 16, 2020, plaintiffs requested an extension of time to file objections, citing a delay in receipt of the Report-Recommendation and Order, limited resources due to the coronavirus pandemic, the restriction on library access because of the coronavirus pandemic, a death in the family of one of the plaintiffs, and because the plaintiffs were intending to seek the help of

¹The Court previously granted LaPietra's motion to proceed *in forma pauperis* and dismissed any claims that LaPietra asserted on behalf of Tarver. (Dkt. No. 4 at 4-5.)

an attorney regarding their objections. This application was granted by Judge Dancks on October 19, 2020, and plaintiffs were given until November 19 2020 to file their objections. On November 19, 2020, plaintiffs filed a letter with the Court requesting an additional 2- 3 week extension to file objections, citing that they were intending to consult with a specified attorney and because they intended to obtain information from Tarver's doctor that they wanted to incorporate in their objections. Plaintiffs' request for an additional extension of time to file objections is denied. They have failed to demonstrate good cause for an additional extension of time. Further, Plaintiffs will suffer no prejudice by the denial of this request because Judge Dancks recommends that certain claims be allowed to proceed, that others be dismissed without prejudice and with leave to replead, and that plaintiffs' motion for appointment of counsel (which may now be moot) be denied with leave to renew. While Judge Dancks recommends that claims against the Albany Police Department and the Albany County Corrections Facility be dismissed with prejudice, she also recommends that these claims be allowed to proceed against the real parties in interest, the City of Albany and Albany County, respectively. In this regard, Judge Dancks recommends that the claims against the Albany Police Department be allowed to be replied against the City of Albany, and that the County of Albany be added to the docket as the real party in interest in the claims against the Albany County Corrections Facility.

Because plaintiffs expressed an intention to file objections but waited until the last day to request an extension, the Court will deem them to have filed a general objection and will review Judge Dancks's recommendations accordingly.

II. STANDARD OF REVIEW

When objections to a magistrate judge's report and recommendation are lodged, the district court makes a "de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After reviewing the report and recommendation, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b).

III. DISCUSSION

After conducting a *de novo* review of the issues addressed by Judge Dancks in her Report-Recommendation and Order, the Court adopts the recommendations for the reasons stated in Judge Dancks's thorough report.

IV. CONCLUSION

For the reasons discussed above, plaintiffs' letter motion for an extension of time to file objections to the Report-Recommendation and Order (Dkt. No. 31) is **DENIED**.

Further, the Court **ACCEPTS** and **ADOPTS** Judge Dancks's recommendations in the Report-Recommendation and Order (Dkt. No. 24). Therefore, it is hereby

ORDERED that plaintiffs' claims against City of Albany Police Department and Albany County Corrections Facility are **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted; and it is further

ORDERED that the Clerk is directed to revise the docket sheet to **ADD** Albany County as a defendant in this action; and it is further

ORDERED that Tarver's Fourteenth Amendment excessive force and failure-to-protect claims against C.O. Burns and Sgt. Remillard **SURVIVE** initial review and require a response; and it is further

ORDERED that LaPietra's First Amendment *Moneil* claim against Albany County **SURVIVES** initial review and requires a response; and it is further

ORDERED that the remaining claims are **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND** pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted.

If plaintiffs choose to file an amended complaint, any amended complaint must comply with Rules 8 and 10 of the Federal Rules. Any such amended complaint must be signed by both plaintiffs and clearly set forth facts that give rise to the claims, including the dates, times, and places of the alleged underlying acts, and each individual who committed each alleged wrongful act. In addition, the revised pleading should allege facts demonstrating the specific involvement of any of the named defendants in the deprivations alleged in sufficient detail to establish that they were tangibly connected to those deprivations. Any such amended complaint will replace the existing Complaint, and must be a wholly integrated and complete pleading that does not rely upon or incorporate by reference any pleading or document previously filed with the Court.

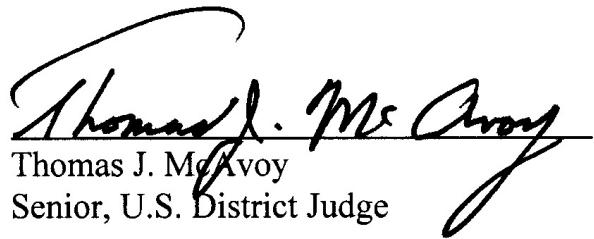
If plaintiffs intend to file an amended complaint they must do so within thirty (30) days of the date of this Decision and Order. If they fail to timely do so, the case will proceed on the remaining claims in the Complaint.

The Clerk can terminate all defendants EXCEPT Albany County, C.O. Burns, and

Sgt. Remillard.

IT IS SO ORDERED.

Dated: November 30, 2020



The image shows a handwritten signature in black ink, which appears to read "Thomas J. McAvoy". Below the signature, there is printed text identifying the signer.

Thomas J. McAvoy
Senior, U.S. District Judge